

BEFORE THE
Federal Communications Commission
WASHINGTON, DC

RECEIVED

JUN 28 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	
Implementation of Cable Act)	CS Docket No. 96-85
Reform Provisions of the)	
Telecommunications Act of 1996)	

REPLY COMMENTS OF J.P. MORGAN & CO., BROWN BROTHERS HARRIMAN & CO., OLYMPUS PARTNERS, AND FIRST UNION CAPITAL PARTNERS, INC.

On behalf of J.P. Morgan & Co., Brown Brothers Harriman & Co., Olympus Partners, and First Union Capital Partners, Inc. (collectively, the "Investors"), we hereby file these Reply Comments in the above captioned proceeding.¹ Specifically, several commenters² have asked that the Commission's rules allow institutional investors (such as bank trusts, insurance companies, and private equity funds) to hold interests in excess of the 20 percent limit proposed in the Notice, without affecting the operator's status as a small cable operator under the

¹ Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, CS Docket No. 96-85, FCC 96-154 (released April 9, 1996) ("Notice").

² See Comments of the National Cable Television Association at 34; Comments of Cole Raywid & Braverman at 14-16; Comments of the Small Cable Business Association at 13-19; Comments of Frontiervision Operating Partners, L.P. at 3-8.

Telecommunications Act of 1996 (the "1996 Act").³ The Investors wish to express their belief that such an allowance, if properly cognizant of the oversight functions modern institutional investors must retain, would be vital to insuring that institutional investors continue to provide small cable operators much needed capital.

As institutional providers of equity capital who currently hold interests in small cable enterprises, the Investors have been instrumental in helping small cable companies provide advanced cable services to the high-cost rural and tertiary communities that small cable companies commonly serve. As both the Commission and the commenters have noted, access to institutional investor capital has become increasingly critical to the successful development of small companies in telecommunications markets.⁴

However, the Investors are greatly concerned that the Notice's proposed small cable operator rules will unnecessarily limit the role of institutional investors in a manner not intended by the 1996 Act. Specifically, the Notice proposes to attribute ownership to any holder of a 20 percent equity

³ Pub.L.No. 104-104, 100 Stat. 56, approved Feb. 8, 1996.

⁴ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 9 F.C.C.R. 4493 (1994); Comments of the National Cable Television Association at 34; Comments of Cole Raywid & Braverman at 14-16; Comments of the Small Cable Business Association at 13-19; Comments of Frontiervision Operating Partners, L.P. at 3-8.

interest, regardless of the investor's status.⁵ Thus, any small cable operator who has an institutional investor holding an equity interest of 20 percent or more would be deprived of the regulatory relief allowed small cable operators under the 1996 Act.

This 20 percent limit is likely to cut off institutional investors as a source of added capital for small cable entities. Small, undiversified, or inchoate cable businesses represent a higher investment risk than larger, more established cable systems. One of the major factors which encourages investment in these small cable companies despite the higher risk is the possibility of substantial regulatory relief under the Communications Act. In addition to removing substantial compliance costs, regulatory relief assures that a small cable operator will be able to set rates at a level which will recover the costs of any upgrade or build-out without the inherent risk and delay of extended rate proceedings. It is unlikely that any institutional investor would risk losing this necessary relief by investing more than 20 percent in a small cable business. Thus, although many institutional investors would be willing, as a business matter, to make a more substantial investment in a small cable business, the rules proposed in the Notice would deter it.

⁵ Notice at ¶ 83.

More importantly, the Investors believe that a restriction on equity investment by institutional investors is not unnecessary to the proper implementation of the small cable operator provisions of the 1996 Act. Indeed, in so far as the proposed rule limits small cable operator access to this capital market the rule entirely inconsistent with Congress' intent to provide small cable operators greater access to capital.⁶ Moreover, affiliation with an institutional investor does not assuage the broader difficulties small cable operators face in attracting capital on the open market. Unlike affiliation with a large MSO or other media company, affiliation with an institutional investor does not provide the small cable operator with unconditional access to capital. Rather, institutional investors are required to place the financial interests of the parties they represent over the business needs of the cable operator. In addition, institutional investors provide absolutely no aid in reducing the small cable operator's higher per subscriber costs or in achieving the economies of scale realized by larger MSOs. In short, an institutional investor does not affect any of the reasons why Congress and the Commission have consistently chosen to relax regulatory burdens on small cable operators.⁷ Therefore, the Investors believe that

⁶ See Notice at ¶ 83.

⁷ See, e.g., H.R. Rep. No. 204, 104th Cong., 1st Sess. 110 (1995) ("the Committee intends to provide regulatory relief to those companies that lack the capital and technical expertise

a small cable operator should be eligible for regulatory relief regardless of its affiliation with institutional investors.

Finally, the Investors request that any rule which allows greater institutional investment accommodate the ancillary oversight functions institutional investors must perform in order to protect their clients' interests. Such oversight functions are not intended to have any influence over the day-to-day operations of the cable system, but rather consist of the right to monitor basic structural and financial decisions which directly affect the value and security of the institutional investor's investment. In today's capital market, nearly all institutional investors require this minimal amount of oversight in conjunction with any major capital transaction. Thus, a rule which allows institutional investors greater flexibility to provide capital to small cable operators, but which does not allow for ancillary oversight functions, would have a substantially limited practical effect.

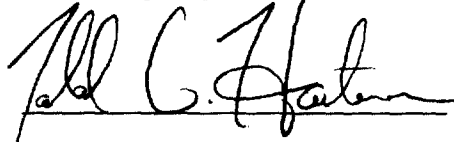
necessary to comply with the Commission's rate regulations "); Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92-266 & 93-215, 10 F.C.C.R. 7393, 7407-7408 (1995) ("[r]elaxing regulatory burdens should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operator's ability to attract capital, thus enabling them to achieve the goals of Congress. ...[Thus], our relief for smaller cable entities is aimed at those that do not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies.").

CONCLUSION

For the foregoing reasons, the Investors respectfully request that the Commission allow institutional investors to continue providing vital capital to small cable operators in a manner consistent with these Reply Comments.

Respectfully submitted,

J.P. MORGAN & CO.
BROWN BROTHERS HARRIMAN & CO.
OLYMPUS PARTNERS
FIRST UNION CAPITAL PARTNERS, INC.

A handwritten signature in dark ink, appearing to read "Phillip L. Verveer", written over a horizontal line.

Phillip L. Verveer
Todd G. Hartman

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
(202) 328-8000

Their Attorneys

June 28, 1996